

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number : 10/083,249 Confirmation No.: 8236
Applicants : Joseph A. GIORDANO, et al.
Filed : February 27, 2002
Title : SYSTEM AND METHOD FOR PROCESSING FINANCIAL
TRANSACTIONS
TC/Art Unit : 3692
Examiner: Graham, Clement B.
Docket No. : 24124.000172

APPEAL BRIEF

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CORRECTED APPEAL BRIEF

In response to the Notification of Non-Compliant Appeal Brief dated February 11, 2009 (“Notification”), which indicated that the Appeal Brief filed January 8, 2009 was Non-Compliant because claim 68 was inadvertently identified as an independent claim in Section V “Summary of Claimed Subject Matter,” Appellants respectfully submit this Corrected Appeal Brief to correct this minor typographical error. In response to the Non-Final Office Action dated June 23, 2008, rejecting claims 21-26 and 52-71, Appellants respectfully request that the Board of Patent Appeals and Interferences reconsider and withdraw the rejections of record, and allow the pending claims, which are attached hereto as an Appendix.

I. REAL PARTY IN INTEREST

The real party in interest is ExxonMobil Research and Engineering Company.

II. RELATED APPEALS AND INTERFERENCES

There are no known related appeals or interferences.

III. STATUS OF CLAIMS

Claims 21-26 and 52-71 are currently pending in this application. Claims 1-20 and 27-51 were previously cancelled. Claims 21-26 and 52-71 are currently rejected under 35 U.S.C. §

103(a) as being allegedly unpatentable over U.S. Patent No. 6,089,284 to Kaehler et al. (“Kaehler”) in view of U.S. Patent No. 5,948,040 to DeLorme et al. (“DeLorme”).¹

The rejections of claims 21-26 and 52-71 are appealed.

IV. STATUS OF AMENDMENTS

No amendments to the claims have been filed subsequent to the Office Action dated June 23, 2008.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Appellants believe that a brief discussion of the background technology, followed by a brief summary of the embodiments of the invention and the problems solved by the embodiments of the present invention, will assist the Board of Patent Appeals and Interferences (hereinafter referred to as “the Board”) in appreciating the significant advances made by the embodiments of the present invention. Finally, concise explanations of each of the independent claims are provided, including reference to exemplary portions of the specification and figures.

A. The Background

Retail store chains survive on high sales volumes and low profit margins. Accordingly, retail professionals are constantly searching for cost-effective mechanisms to encourage consumers to shop at their retail stores and for efficient low-cost methods to process completed

¹ Appellants note that there appears to be several errors in paragraph 4 of the Office Action. First, paragraph 4 of the Office Action cites “claims 11, 13-26, and 50-51” as the claims being rejected. However, claims 11, 13-20, and 50-51 have been cancelled and claims 21-26 and 52-71 are the claims that are currently pending. The fact that the Office Action acknowledges this in paragraph 2 and treats claims 21-26 and 52-71 as the claims being rejected in the rest of the Office Action appears to indicate that the Examiner made a typographical error and the Examiner’s intention was to reject claims 21-26 and 52-71, not claims 11, 13-26, and 50-51. Second, paragraph 4 of the Office Action cites U.S. Patent No. 5,948,040 to “Delorane et al.” as one of the references used in the rejection under 35 U.S.C. § 103. However, this appears to be another typographical error by the Examiner because the inventors of U.S. Patent No. 5,948,040 are DeLorme et al., not Delorane et al. Accordingly, Appellants will treat claims 21-26 and 52-71 as being allegedly unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,089,284 to Kaehler et al. (“Kaehler”) in view of U.S. Patent No. 5,948,040 to DeLorme et al. (“DeLorme”).

retail transactions. In the past, a common approach utilized by retailers for motivating customers to shop in a particular establishment was to provide purchasing incentives to their customers, usually in the form of printed discount coupons. Other approaches include simple loyalty/rewards programs and/or Internet-based payment solutions. However, each of these approaches may not efficiently, securely, and comprehensively remedy the shortcomings of modern customer shopping patterns and trends. *See, e.g.*, Specification at page 2, line 11 – page 5, line 19.

In view of the shortcomings of currently available transaction processing systems and methods, it is desirable to provide a system and method that increases customer convenience and security.

B. The Embodiments of The Present Invention

The present invention satisfies the above-described need by providing a system and method for processing consumer transactions. In the systems of the present invention, a consumer located in a retail establishment may identify goods or services to be purchased and then may communicate payment information to the merchant by transmitting an identification signal via a wireless customer transceiver to a merchant transceiver coupled to a point of sale (POS) device. Once the merchant transceiver captures the customer ID, it may pass it to a POS device that then may combine the customer ID, merchant ID and transaction data into an authorization request. The POS device may then transmit the data to a transaction processing system (host computer) where the customer's payment method is identified. For payment methods requiring authorization, a request for authorization may be transmitted to the appropriate payment processing center. Once the payment processing center authorizes the transaction, it may transmit an authorization code back to the POS device via the transaction

processing system. Since the system never transmits a customer's credit card or debit card number across an unsecured link, it may provide a heightened degree of security over prior art systems. Also, by communicating with the merchant via a wireless customer transceiver, the system may increase customer confidence that their credit card number or other payment data will not be impermissibly accessed and fraudulently utilized by nefarious retail store employees. The system may also provide a much greater degree of convenience to participating customers since it allows them to preassign specific payment methods to specific retail establishments, and to have the preassigned payment methods automatically selected by the transaction processing system whenever the customer utilizes his/her wireless customer transceiver in the merchant's retail establishment. *See, e.g.*, Specification at page 6, lines 1–21.

The system may also provides a way to enroll users in a transaction processing program. For example, a system and method may be provided where a customer may receive a transponder device from a merchant and may be enrolled in a transaction processing program upon use of the transponder. One step in processing transactions may include a customer accessing the enrollment subsystem of the transaction processing system. This step may include all the activities that must take place before an individual may consummate retail transactions with customer transceiver using the transaction processing system. After the customer is enrolled, the system then is capable of processing a customer transaction. *See, e.g.*, Specification at page 43, line 21 – page 44, line 7.

In some embodiments, a customer may present a customer transceiver to a merchant reader or POS terminal. A transmitter ID or code may be transmitted from the transceiver to the reader or POS terminal. The customer may provide at least one method of payment and additional information corresponding to the at least one method of payment. The customer may

also supply additional customer identification. This information may include, for example, customer name, account password, PIN, mailing address, email address, daytime telephone number, evening telephone number, date of birth, Social Security number, driver's license number, spending limits, PIN usage preferences, photograph of customer, etc. The transmitter ID may be associated with the additional customer identification. This transmitter ID may be transmitted to a host transaction processing system or database along with the associated payment and customer information. The host transaction processing system may determine whether the payment information supplied by the customer is valid and authorized for purchase transaction. If any payment information is invalid or not authorized for purchase transactions, the customer may be requested to provide further or corrected payment information. If the payment information is valid, the payment and customer information may be stored in association with the transmitter ID in a database utilized by the transaction processing system. The process may include merchant validation of the additional customer information (e.g., by comparing a photographic identification on a driver's license with the presenting customer). *See, e.g.*, Specification at page 46, line 19 – page 47, line 13.

As the process continues, the customer may wish to then make a purchase with the newly enrolled customer transceiver. If the customer does not want to make a purchase, the process may terminate. If the customer wishes to make a purchase, the process may continue when the customer may present the product or service desired for purchase. The merchant enters the transaction data for the product or service into merchant's POS terminal. An authorization request may be transmitted to the transaction processing system by the POS terminal. The customer does not have to re-present the customer transponder to the POS terminal as the transmitter ID may be already registered with the POS terminal from the enrollment process.

See, e.g., Specification at page 47, lines 14 – 24.

Accordingly, a system and method for enrolling users in a transaction processing program may be provided to efficiently, securely, and comprehensively remedy the shortcomings of modern customer shopping patterns and increase customer convenience.

C. Explanation of Independent Claim 21

A method for enrolling users in a transaction processing program (*See, e.g.*, Fig. 14b; page 146, line 19 – page 47, line 23), comprising:

receiving transmitter identification data and payment information at a point-of-sale device (*See, e.g.*, Fig. 14b, 1405, 1410);

electronically associating said transmitter identification data with said payment information (*See, e.g.*, Fig. 14b, 1420);

transmitting said associated transmitter identification data and said payment information to a host transaction processing system (*See, e.g.*, Fig. 14b, 1425); and

electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system (*See, e.g.*, Fig. 14b, 1440, 1445, 1450).

D. Explanation of Independent Claim 24

A method for enrolling users in a transaction processing program (*See, e.g.*, Fig. 14b; page 146, line 19 – page 47, line 23), comprising:

receiving transmitter identification data and payment information at one of a plurality of point-of-sale devices (*See, e.g.*, Fig. 14b, 1405, 1410);

transmitting said transmitter identification data and said payment information to a host transaction processing system (*See, e.g.*, Fig. 14b, 1420);

electronically assigning a unique customer identifier that corresponds to said transmitter identification data (*See, e.g.*, Fig. 14b, 1425);

associating said unique customer identifier, said transmitter identification data and said payment information (*See, e.g.*, Fig. 14b, 1425); and

electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated unique customer identifier, transmitter identification data and payment information in said host transaction processing system (*See, e.g.*, Fig. 14b, 1440, 1445, 1450).

E. Explanation of Independent Claim 58

A system (*See, e.g.*, Fig. 3, 30), comprising:

a merchant reader (*See, e.g.*, Fig. 3, 34) that receives transmitter identification data and payment information (*See, e.g.*, Fig. 14b, 1405, 1410), electronically associates said transmitter identification data with said payment information (*See, e.g.*, Fig. 14b, 1420), and transmits said associated transmitter identification data and said payment information to a host transaction processing system (*See, e.g.*, Fig. 14b, 1425); and

a host processing system (*See, e.g.*, Fig. 3, 26) that receives said transmitted information and enrolls a user associated with a customer transmitter by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system (*See, e.g.*, Fig. 14b, 1440, 1445, 1450).

F. Explanation of Independent Claim 62

A system (*See, e.g.*, Fig. 3, 30), comprising:

a merchant reader (*See, e.g.*, Fig. 3, 34) that receives transmitter identification data and payment information (*See, e.g.*, Fig. 14b, 1405, 1410) and transmits said transmitter

identification data and said payment information to a host transaction processing system (*See, e.g.*, Fig. 14b, 1425); and

a host transaction processing system (*See, e.g.*, Fig. 3, 26) that electronically assigns a unique customer identifier that corresponds to said transmitter identification data (*See, e.g.*, Fig. 14b, 1420), associates said unique customer identifier (*See, e.g.*, Fig. 14b, 1425), said transmitter identification data and said payment information , and enrolls a user associated with a customer transmitter by storing enrollment data comprising said associated unique customer identifier, transmitter identification data and payment information in said host transaction processing system (*See, e.g.*, Fig. 14b, 1440, 1445, 1450).

G. Explanation of Independent Claim 66

A method for enrolling users in a transaction processing program (*See, e.g.*, Fig. 14b; page 146, line 19 – page 47, line 23), comprising:

receiving transmitter identification data and payment information at a point-of-sale device (*See, e.g.*, Fig. 14b, 1405, 1410);

automatically associating said transmitter identification data with said payment information (*See, e.g.*, Fig. 14b, 1420);

transmitting said associated transmitter identification data and said payment information to a host transaction processing system (*See, e.g.*, Fig. 14b, 1425); and

automatically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system (*See, e.g.*, Fig. 14b, 1440, 1445, 1450).

H. Explanation of Independent Claim 69

A method for enrolling users in a transaction processing program (*See, e.g.*, Fig. 14b;

page 146, line 19 – page 47, line 23), comprising:

receiving transmitter identification data and payment information at one of a plurality of point-of-sale devices (*See, e.g.*, Fig. 14b, 1405, 1410);
transmitting said transmitter identification data and said payment information to a host transaction processing system (*See, e.g.*, Fig. 14b, 1420);
automatically assigning a unique customer identifier that corresponds to said transmitter identification data (*See, e.g.*, Fig. 14b, 1425);
associating said unique customer identifier, said transmitter identification data and said payment information (*See, e.g.*, Fig. 14b, 1425); and
automatically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated unique customer identifier, transmitter identification data and payment information in said host transaction processing system (*See, e.g.*, Fig. 14b, 1440, 1445, 1450).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issue on appeal is whether the following rejection is proper:

- The rejection of claims 21-26 and 52-71 under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,089,284 to Kaehler et al. (“Kaehler”) in view of U.S. Patent No. 5,948,040 to DeLorme et al. (“DeLorme”).

VII. ARGUMENT

The rejections against the pending claims under consideration in the above-identified patent application should be reversed for at least the reasons set forth below.

A. Brief Description of the Art Applied to the Claims

U.S. Patent No. 6,089,284 to Kaehler et al. (“Kaehler”)

Kaehler purports to disclose a fuel dispensing system using a transponder (Kaehler, Title.) Kaehler's fuel dispensing system purports to provide dual-stage preconditioning and authentication for enhancing fueling transaction. (Kaehler, Abstract).

U.S. Patent No. 5,948,040 to DeLorme et al. ("DeLorme")

DeLorme purports to disclose a travel reservation information and planning system (DeLorme, Title.) DeLorme's system purports to generate "map ticket" output in various media for guidance and transactions en route. DeLorme's system purports to disclose a TRIPS (Travel Reservation and Information System) that permits a user to custom-define and examine travel rout and/or plans. (DeLorme, col. 6, lines 56-60).

B. The Rejection of Claims 21-26 and 52-71 Under 35 U.S.C. § 103 is Improper

Claims 21-26 and 52-71 are currently rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Kaehler in view of DeLorme. Appellants respectfully traverse this rejection.

1. Claim 21 is Separately Patentable

The rejection is improper at least because Kaehler and DeLorme (1) fail to teach each and every claim limitation and (2) fail to establish a prima facie case of obviousness for claim 21 rejected under 103.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence,

or “secondary considerations,” of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int’l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An “expansive and flexible approach” should be applied when determining obviousness based on a combination of prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather, there must still be some “reason that would have prompted” a person of ordinary skill in the art to combine the elements in the specific way that he or she did. Id.; In re Icon Health & Fitness, Inc., 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

Specifically, independent claim 21 recites “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system.” As acknowledged by the Office, “Kaehler fails to explicitly teach electronically enrolling a user associated with a customer transponder by storing enrollment data.” *See* Office Action at page 2. The Office therefore relies on DeLorme to teach this limitation. However, Appellants respectfully submit that DeLorme, *inter alia*, does not disclose at least these limitations and therefore fails to cure the deficiencies of Kaehler.

The Office asserts that DeLorme teaches an “Accounting Subsystem [that] manages ACCOUNTING DATA...[which] is involved in various transactional operations in TRIPS [Travel Reservation and Information System]...” *See* Office Action at page 3. Appellants note that nothing in DeLorme teaches “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data

and said payment information in said host transaction processing system,” as claimed. The Office does not even assert as such. In fact, the Office merely relies on DeLorme for its teaching directed to “accounting data” within the framework of travel reservation and planning system, e.g., TRIPS. The fact that accounting data may be involved in various transaction operations” of TRIPS is completely irrelevant since claim 21 is directed towards “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system.” At best, DeLorme uses computerized travel reservation information and planning system to generate “map ticket” outputs in various media, which has nothing to do with electronically enrolling a user associated with a customer transponder by storing enrollment data. *See* Office Action at Abstract. Therefore, the Office fails to set forth a *prima facie* case of obviousness since the it has not been shown that each and every claim limitation is taught by the asserted references.

In addition, even assuming, for the sake of argument, that Kaehler, in combination with DeLorme, teaches all the claimed elements, the Office does not present a proper rationale to combine the references to achieve the claimed system and method, and thus has failed to set forth a *prima facie* case of obviousness. Specifically, modifying the primary reference to include the features of the secondary references would not have been obvious because the modification would represent classic **impermissible hindsight**.

For example, the reasons asserted by the Office Action that it would have been obvious to modify Kaehler’s specific fuel-dispensing system using a transponder with the secondary reference, e.g., with DeLorme’s travel reservation information and planning system “to provide a completely integrated system that enable[s] an individual to plan, review, locate, schedule and

select or execute customized or personalized travel arrangements and activities in association with map displays or other output of travel routes, chronological events, diverse travel topics and geographical points of interest along such routes” is clearly improper. *See, e.g.*, Office Action at p. 3.

First, Appellants respectfully submit that the Office improperly *assumes* the combination recited in the claim would be desired. For example, the Office asserts that the combination would provide these performance advantages even though nothing in the prior art, taken as a whole, suggests this desire or advantage. Specifically, the Office Action assumes that it would have been obvious to one of ordinary skill in the art to use a travel reservation information and planning system in Kaehler’s fuel dispensing system using a transponder. “In order to rely on a reference as a basis for rejection of the applicant’s invention, the reference must either be in the field of the applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” *In re Oetiker*, 977 F.2d 1443, 1447, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Here, The Office Action fails to explain *why* the art as a whole would suggest use of a travel reservation information and planning system in Kaehler’s system, which has nothing to do with travel and reservation planning, let alone generating “map tickets” for various media outputs. Accordingly, Appellants submit that Kaehler and Delorme are nonanalogous art. Thus, Appellants submit that the Office’s assumption is clearly improper.

Second, Appellants submit that the Office’s assertion of obviousness is lacking in *evidence*. Instead, the Office Action improperly relies on its own hindsight conjecture that the feature of a travel reservation information and planning system may “provide an integrated system.” *See, e.g.*, Office Action at page 4. For example, the Office’s statement that DeLorme would provide such a feature to Kaehler’s specific method and system is wholly unsupported.

The reasons for obviousness cited by the Office to combine the references is nowhere to be found in either the DeLorme or Kaehler reference. Even assuming that the rationale is applicable, Kaehler makes no suggestion that it would benefit from the teachings of DeLorme, specifically the use of a travel reservation information and planning feature, or *how* that would work to achieve the claimed invention. For example, Kaehler is concerned with a fuel dispensing system using a transponder whereas DeLorme is primarily concerned with a travel reservation information and planning system for generating “map tickets” in various outputs. In fact, DeLorme’s system is directed to merely providing information, not transaction processing using a transponder. Therefore, the person of ordinary skill would not find it obvious to combine teachings from these disparate references to arrive at Appellants’ invention. As a result, Appellants respectfully submit that the combination of the primary reference and the secondary references would not have been obvious to one of ordinary skill in the art at the time of the invention and that the Office’s conclusion is clearly based on **improper hindsight** reasoning gleaned from Appellants’ specification.

Thus, the Office has failed to set forth a *prima facie* case of obviousness. For at least the reasons discussed above, the obviousness rejection for claim 21 is improper and should be withdrawn.

Therefore, independent claim 21 is allowable over Kaehler and DeLorme and allowance thereof is respectfully requested.

2. Claim 22 is Separately Patentable

Claim 22 is separately patentable because Kaehler and DeLorme fail to disclose the payment information corresponds to a credit card, debit card, or bank account, or a combination thereof. Furthermore, the Office Action’s rejection of this claim is improper for at least similar

reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 22. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 22 be withdrawn.

3. Claim 23 is Separately Patentable

Claim 23 is separately patentable because Kaehler and DeLorme fail to disclose transmitting additional customer information to said host transaction processing system, associating said additional customer information with said transmitter identification data and said payment information, and storing said associated additional customer information, transmitter identification data and said payment information. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 23. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 23 be withdrawn.

4. Claim 24 is Separately Patentable

The rejection is improper at least because Kaehler and DeLorme (1) fail to teach each and every claim limitation and (2) fail to establish a prima facie case of obviousness for claim 24 rejected under 103.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie

case of obviousness. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or “secondary considerations,” of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An “expansive and flexible approach” should be applied when determining obviousness based on a combination of prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather, there must still be some “reason that would have prompted” a person of ordinary skill in the art to combine the elements in the specific way that he or she did. Id.; In re Icon Health & Fitness, Inc., 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

Specifically, independent claim 24 recites “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system.” As acknowledged by the Office, “Kaehler fails to explicitly teach electronically enrolling a ser associated with a customer transponder by storing enrollment data.” *See* Office Action at page 4. The Office therefore relies on DeLorme to teach this limitation. However, Appellants respectfully submit that DeLorme, *inter alia*, does not disclose at least these limitations and therefore fails to cure the deficiencies of Kaehler.

The Office asserts that DeLorme teaches an “Accounting Subsystem [that] manages

ACCOUNTING DATA...[which] is involved in various transactional operations in TRIPS [Travel Reservation and Information System]..." *See Office Action at page 4.* Appellants note that nothing in DeLorme teaches "electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system," as claimed. The Office does not even assert as such. In fact, the Office merely relies on DeLorme for its teaching directed to "accounting data" within the framework of travel reservation and planning system, e.g., TRIPS. The fact that accounting data may be involved in various transaction operations" of TRIPS is completely irrelevant since claim 24 is directed towards "electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system." At best, DeLorme uses computerized travel reservation information and planning system to generate "map ticket" outputs in various media, which has nothing to do with electronically enrolling a user associated with a customer transponder by storing enrollment data. *See Office Action at Abstract.* Therefore, the Office fails to set forth a *prima facie* case of obviousness since the it has not been shown that each and every claim limitation is taught by the asserted references.

In addition, even assuming, for the sake of argument, that Kaehler, in combination with DeLorme, teaches all the claimed elements, the Office does not present a proper rationale to combine the references to achieve the claimed system and method, and thus has failed to set forth a *prima facie* case of obviousness. Specifically, modifying the primary reference to include the features of the secondary references would not have been obvious because the modification would represent classic **impermissible hindsight**.

For example, the reasons asserted by the Office Action that it would have been obvious to modify Kaehler's specific fuel-dispensing system using a transponder with the secondary reference, e.g., with DeLorme's travel reservation information and planning system "to provide a completely integrated system that enable[s] an individual to plan, review, locate, schedule and select or execute customized or personalized travel arrangements and activities in association with map displays or other output of travel routes, chronological events, diverse travel topics and geographical points of interest along such routes" is clearly improper. *See, e.g.*, Office Action at p. 4-5.

First, Appellants respectfully submit that the Office improperly *assumes* the combination recited in the claim would be desired. For example, the Office asserts that the combination would provide these performance advantages even though nothing in the prior art, taken as a whole, suggests this desire or advantage. Specifically, the Office Action assumes that it would have been obvious to one of ordinary skill in the art to use a travel reservation information and planning system in Kaehler's fuel dispensing system using a transponder. "In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1447, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Here, The Office Action fails to explain *why* the art as a whole would suggest use of a travel reservation information and planning system in Kaehler's system, which has nothing to do with travel and reservation planning, let alone generating "map tickets" for various media outputs. Accordingly, Appellants submit that Kaehler and Delorme are nonanalogous art. Thus, Appellants submit that the Office's assumption is clearly improper.

Second, Appellants submit that the Office's assertion of obviousness is lacking in

evidence. Instead, the Office Action improperly relies on its own hindsight conjecture that the feature of a travel reservation information and planning system may “provide an integrated system.” *See, e.g.*, Office Action at p. 4-5. For example, the Office’s statement that DeLorme would provide such a feature to Kaehler’s specific method and system is wholly unsupported. The reasons for obviousness cited by the Office to combine the references is nowhere to be found in either the DeLorme or Kaehler reference. Even assuming that the rationale is applicable, Kaehler makes no suggestion that it would benefit from the teachings of DeLorme, specifically the use of a travel reservation information and planning feature, or *how* that would work to achieve the claimed invention. For example, Kaehler is concerned with a fuel dispensing system using a transponder whereas DeLorme is primarily concerned with a travel reservation information and planning system for generating “map tickets” in various outputs. In fact, DeLorme’s system is directed to merely providing information, not transaction processing using a transponder. Therefore, the person of ordinary skill would not find it obvious to combine teachings from these disparate references to arrive at Appellants’ invention. As a result, Appellants respectfully submit that the combination of the primary reference and the secondary references would not have obvious to one of ordinary skill in the art at the time of the invention and that the Office’s conclusion is clearly based on improper hindsight reasoning gleaned from Appellants’ specification.

Thus, the Office has failed to set forth a *prima facie* case of obviousness. For at least the reasons discussed above, the obviousness rejection for claim 24 is improper and should be withdrawn.

Therefore, independent claim 24 is allowable over Kaehler and DeLorme and allowance thereof is respectfully requested.

5. Claim 25 is Separately Patentable

Claim 25 is separately patentable because Kachler and DeLorme fail to disclose the payment information corresponds to a credit card, debit card, or bank account, or a combination thereof. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 25. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 25 be withdrawn.

6. Claim 26 is Separately Patentable

Claim 26 is separately patentable because Kaehler and DeLorme fail to disclose transmitting additional customer information to said host transaction processing system, associating said additional customer information with said transmitter identification data and said payment information, and storing said associated additional customer information, transmitter identification data and said payment information. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 26. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 26 be withdrawn.

7. Claim 52 is Separately Patentable

Claim 52 is separately patentable because Kaehler and DeLorme fail to disclose the providing the customer transponder associated with the transmitter identification data to a customer. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a *prima facie* case of obviousness for claim 52. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 52 be withdrawn.

8. Claim 53 is Separately Patentable

Claim 53 is separately patentable because Kaehler and DeLorme fail to disclose the providing the customer transponder and receiving the transmitter data and payment information occurs at a merchant location. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a *prima facie* case of obviousness for claim 53. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 53 be withdrawn.

9. Claim 54 is Separately Patentable

Claim 54 is separately patentable because Kaehler and DeLorme fail to disclose the providing the customer transponder associated with the transmitter identification data to a customer. Furthermore, the Office Action's rejection of this claim is improper for at least similar

reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 54. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 54 be withdrawn.

10. Claim 55 is Separately Patentable

Claim 55 is separately patentable because Kaehler and DeLorme fail to disclose the providing the customer transponder and receiving the transmitter data and payment information occurs at a merchant location. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 55. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 55 be withdrawn.

11. Claim 56 is Separately Patentable

Claim 56 is separately patentable because Kaehler and DeLorme fail to disclose verifying the payment information. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 56. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 56 be withdrawn.

12. Claim 57 is Separately Patentable

Claim 57 is separately patentable because Kaehler and DeLorme fail to disclose verifying the payment information. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 57. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 57 be withdrawn.

13. Claim 58 is Separately Patentable

The rejection is improper at least because Kaehler and DeLorme (1) fail to teach each and every claim limitation and (2) fail to establish a prima facie case of obviousness for claim 58 rejected under 103.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or “secondary considerations,” of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An “expansive and flexible approach” should be applied when determining obviousness based on a combination of

prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather, there must still be some “reason that would have prompted” a person of ordinary skill in the art to combine the elements in the specific way that he or she did. Id.; In re Icon Health & Fitness, Inc., 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

Specifically, independent claim 58 recites “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system.” As acknowledged by the Office, “Kaehler fails to explicitly teach electronically enrolling a ser associated with a customer transponder by storing enrollment data.” *See* Office Action at page 6. The Office therefore relies on DeLorme to teach this limitation. However, Appellants respectfully submit that DeLorme, *inter alia*, does not disclose at least these limitations and therefore fails to cure the deficiencies of Kaehler.

The Office asserts that DeLorme teaches an “Accounting Subsystem [that] manages ACCOUNTING DATA...[which] is involved in various transactional operations in TRIPS [Travel Reservation and Information System]...” *See* Office Action at page 6. Appellants note that nothing in DeLorme teaches “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system,” as claimed. The Office does not even assert as such. In fact, the Office merely relies on DeLorme for its teaching directed to “accounting data” within the framework of travel reservation and planning system,

e.g., TRIPS. The fact that accounting data may be involved in various transaction operations” of TRIPS is completely irrelevant since claim 58 is directed towards “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system.” At best, DeLorme uses computerized travel reservation information and planning system to generate “map ticket” outputs in various media, which has nothing to do with electronically enrolling a user associated with a customer transponder by storing enrollment data. *See* Office Action at Abstract. Therefore, the Office fails to set forth a *prima facie* case of obviousness since the it has not been shown that each and every claim limitation is taught by the asserted references.

In addition, even assuming, for the sake of argument, that Kaehler, in combination with DeLorme, teaches all the claimed elements, the Office does not present a proper rationale to combine the references to achieve the claimed system and method, and thus has failed to set forth a *prima facie* case of obviousness. Specifically, modifying the primary reference to include the features of the secondary references would not have been obvious because the modification would represent classic **impermissible hindsight**.

For example, the reasons asserted by the Office Action that it would have been obvious to modify Kaehler’s specific fuel-dispensing system using a transponder with the secondary reference, e.g., with DeLorme’s travel reservation information and planning system “to provide a completely integrated system that enable[s] an individual to plan, review, locate, schedule and select or execute customized or personalized travel arrangements and activities in association with map displays or other output of travel routes, chronological events, diverse travel topics and geographical points of interest along such routes” is clearly improper. *See, e.g.,* Office Action at

p. 6.

First, Appellants respectfully submit that the Office improperly *assumes* the combination recited in the claim would be desired. For example, the Office asserts that the combination would provide these performance advantages even though nothing in the prior art, taken as a whole, suggests this desire or advantage. Specifically, the Office Action assumes that it would have been obvious to one of ordinary skill in the art to use a travel reservation information and planning system in Kaehler's fuel dispensing system using a transponder. "In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1447, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Here, The Office Action fails to explain *why* the art as a whole would suggest use of a travel reservation information and planning system in Kaehler's system, which has nothing to do with travel and reservation planning, let alone generating "map tickets" for various media outputs. Accordingly, Appellants submit that Kaehler and Delorme are nonanalogous art. Thus, Appellants submit that the Office's assumption is clearly improper.

Second, Appellants submit that the Office's assertion of obviousness is lacking in *evidence*. Instead, the Office Action improperly relies on its own hindsight conjecture that the feature of a travel reservation information and planning system may "provide an integrated system." *See, e.g.*, Office Action at page 6. For example, the Office's statement that DeLorme would provide such a feature to Kaehler's specific method and system is wholly unsupported. The reasons for obviousness cited by the Office to combine the references is nowhere to be found in either the DeLorme or Kaehler reference. Even assuming that the rationale is applicable, Kaehler makes no suggestion that it would benefit from the teachings of DeLorme,

specifically the use of a travel reservation information and planning feature, or *how* that would work to achieve the claimed invention. For example, Kaehler is concerned with a fuel dispensing system using a transponder whereas DeLorme is primarily concerned with a travel reservation information and planning system for generating “map tickets” in various outputs. In fact, DeLorme’s system is directed to merely providing information, not transaction processing using a transponder. Therefore, the person of ordinary skill would not find it obvious to combine teachings from these disparate references to arrive at Appellants’ invention. As a result, Appellants respectfully submit that the combination of the primary reference and the secondary references would not have obvious to one of ordinary skill in the art at the time of the invention and that the Office’s conclusion is clearly based on **improper hindsight** reasoning gleaned from Appellants’ specification.

Thus, the Office has failed to set forth a *prima facie* case of obviousness. For at least the reasons discussed above, the obviousness rejection for claim 58 is improper and should be withdrawn.

Therefore, independent claim 58 is allowable over Kaehler and DeLorme and allowance thereof is respectfully requested.

14. Claim 59 is Separately Patentable

Claim 59 is separately patentable because Kaehler and DeLorme fail to disclose the payment information corresponds to a credit card, debit card, or bank account, or a combination thereof. Furthermore, the Office Action’s rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a *prima facie* case of obviousness for claim 59. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this

feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 59 be withdrawn.

15. Claim 60 is Separately Patentable

Claim 60 is separately patentable because Kaehler and DeLorme fail to disclose the merchant reader receives additional customer information and transmits the additional customer information to said host transaction processing system, and wherein said host processing system associates said additional customer information with said transmitter identification data and said payment information, and stores said associated additional customer information, transmitter identification data and said payment information. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 60. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 60 be withdrawn.

16. Claim 61 is Separately Patentable

Claim 61 is separately patentable because Kaehler and DeLorme fail to disclose the merchant reader is associated with a point-of-sale device. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 61. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 61 be withdrawn.

17. Claim 62 is Separately Patentable

The rejection is improper at least because Kaehler and DeLorme (1) fail to teach each and every claim limitation and (2) fail to establish a prima facie case of obviousness for claim 62 rejected under 103.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or “secondary considerations,” of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int’l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An “expansive and flexible approach” should be applied when determining obviousness based on a combination of prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather, there must still be some “reason that would have prompted” a person of ordinary skill in the art to combine the elements in the specific way that he or she did. Id.; In re Icon Health & Fitness, Inc., 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

Specifically, independent claim 62 recites “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter

identification data and said payment information in said host transaction processing system.” As acknowledged by the Office, “Kaehler fails to explicitly teach electronically enrolling a user associated with a customer transponder by storing enrollment data.” *See* Office Action at page 7. The Office therefore relies on DeLorme to teach this limitation. However, Appellants respectfully submit that DeLorme, *inter alia*, does not disclose at least these limitations and therefore fails to cure the deficiencies of Kaehler.

The Office asserts that DeLorme teaches an “Accounting Subsystem [that] manages ACCOUNTING DATA...[which] is involved in various transactional operations in TRIPS [Travel Reservation and Information System]...” *See* Office Action at p. 7-8. Appellants note that nothing in DeLorme teaches “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system,” as claimed. The Office does not even assert as such. In fact, the Office merely relies on DeLorme for its teaching directed to “accounting data” within the framework of travel reservation and planning system, e.g., TRIPS. The fact that accounting data may be involved in various transaction operations” of TRIPS is completely irrelevant since claim 62 is directed towards “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system.” At best, DeLorme uses computerized travel reservation information and planning system to generate “map ticket” outputs in various media, which has nothing to do with electronically enrolling a user associated with a customer transponder by storing enrollment data. *See* Office Action at Abstract. Therefore, the Office fails to set forth a *prima facie* case of obviousness since the it has not been shown that each and every claim limitation is taught by the

asserted references.

In addition, even assuming, for the sake of argument, that Kaehler, in combination with DeLorme, teaches all the claimed elements, the Office does not present a proper rationale to combine the references to achieve the claimed system and method, and thus has failed to set forth a *prima facie* case of obviousness. Specifically, modifying the primary reference to include the features of the secondary references would not have been obvious because the modification would represent classic **impermissible hindsight**.

For example, the reasons asserted by the Office Action that it would have been obvious to modify Kaehler's specific fuel-dispensing system using a transponder with the secondary reference, e.g., with DeLorme's travel reservation information and planning system "to provide a completely integrated system that enable[s] an individual to plan, review, locate, schedule and select or execute customized or personalized travel arrangements and activities in association with map displays or other output of travel routes, chronological events, diverse travel topics and geographical points of interest along such routes" is clearly improper. *See, e.g.*, Office Action at p. 8.

First, Appellants respectfully submit that the Office improperly *assumes* the combination recited in the claim would be desired. For example, the Office asserts that the combination would provide these performance advantages even though nothing in the prior art, taken as a whole, suggests this desire or advantage. Specifically, the Office Action assumes that it would have been obvious to one of ordinary skill in the art to use a travel reservation information and planning system in Kaehler's fuel dispensing system using a transponder. "In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem

with which the inventor was concerned.” In re Oetiker, 977 F.2d 1443, 1447, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Here, The Office Action fails to explain *why* the art as a whole would suggest use of a travel reservation information and planning system in Kaehler’s system, which has nothing to do with travel and reservation planning, let alone generating “map tickets” for various media outputs. Accordingly, Appellants submit that Kaehler and Delorme are nonanalogous art. Thus, Appellants submit that the Office’s assumption is clearly improper.

Second, Appellants submit that the Office’s assertion of obviousness is lacking in *evidence*. Instead, the Office Action improperly relies on its own hindsight conjecture that the feature of a travel reservation information and planning system may “provide an integrated system.” *See, e.g.*, Office Action at page 8. For example, the Office’s statement that DeLorme would provide such a feature to Kaehler’s specific method and system is wholly unsupported. The reasons for obviousness cited by the Office to combine the references is nowhere to be found in either the DeLorme or Kaehler reference. Even assuming that the rationale is applicable, Kaehler makes no suggestion that it would benefit from the teachings of DeLorme, specifically the use of a travel reservation information and planning feature, or *how* that would work to achieve the claimed invention. For example, Kaehler is concerned with a fuel dispensing system using a transponder whereas DeLorme is primarily concerned with a travel reservation information and planning system for generating “map tickets” in various outputs. In fact, DeLorme’s system is directed to merely providing information, not transaction processing using a transponder. Therefore, the person of ordinary skill would not find it obvious to combine teachings from these disparate references to arrive at Appellants’ invention. As a result, Appellants respectfully submit that the combination of the primary reference and the secondary references would not have obvious to one of ordinary skill in the art at the time of the invention

and that the Office's conclusion is clearly based on improper hindsight reasoning gleaned from Appellants' specification.

Thus, the Office has failed to set forth a *prima facie* case of obviousness. For at least the reasons discussed above, the obviousness rejection for claim 62 is improper and should be withdrawn.

Therefore, independent claim 62 is allowable over Kaehler and DeLorme and allowance thereof is respectfully requested.

18. Claim 63 is Separately Patentable

Claim 63 is separately patentable because Kaehler and DeLorme fail to disclose the payment information corresponds to a credit card, debit card, or bank account, or a combination thereof. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a *prima facie* case of obviousness for claim 63. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 63 be withdrawn.

19. Claim 64 is Separately Patentable

Claim 64 is separately patentable because Kaehler and DeLorme fail to disclose the merchant reader receives additional customer information and transmits the additional customer information to said host transaction processing system, and wherein said host processing system associates said additional customer information with said transmitter identification data and said payment information, and stores said associated additional customer information, transmitter

identification data and said payment information. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 64. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 64 be withdrawn.

20. Claim 65 is Separately Patentable

Claim 65 is separately patentable because Kaehler and DeLorme fail to disclose the merchant reader is associated with a point-of-sale device. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 65. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 65 be withdrawn.

21. Claim 66 is Separately Patentable

The rejection is improper at least because Kaehler and DeLorme (1) fail to teach each and every claim limitation and (2) fail to establish a prima facie case of obviousness for claim 66 rejected under 103.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content

of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or “secondary considerations,” of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int’l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An “expansive and flexible approach” should be applied when determining obviousness based on a combination of prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather, there must still be some “reason that would have prompted” a person of ordinary skill in the art to combine the elements in the specific way that he or she did. Id.; In re Icon Health & Fitness, Inc., 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

Specifically, independent claim 66 recites “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system.” As acknowledged by the Office, “Kaehler fails to explicitly teach electronically enrolling a ser associated with a customer transponder by storing enrollment data.” *See* Office Action at page 9. The Office therefore relies on DeLorme to teach this limitation. However, Appellants respectfully submit that DeLorme, *inter alia*, does not disclose at least these limitations and therefore fails to cure the deficiencies of Kaehler.

The Office asserts that DeLorme teaches an “Accounting Subsystem [that] manages ACCOUNTING DATA...[which] is involved in various transactional operations in TRIPS [Travel Reservation and Information System]...” *See* Office Action at page 9. Appellants note

that nothing in DeLorme teaches “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system,” as claimed. The Office does not even assert as such. In fact, the Office merely relies on DeLorme for its teaching directed to “accounting data” within the framework of travel reservation and planning system, e.g., TRIPS. The fact that accounting data may be involved in various transaction operations” of TRIPS is completely irrelevant since claim 66 is directed towards “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system.” At best, DeLorme uses computerized travel reservation information and planning system to generate “map ticket” outputs in various media, which has nothing to do with electronically enrolling a user associated with a customer transponder by storing enrollment data. *See* Office Action at Abstract. Therefore, the Office fails to set forth a *prima facie* case of obviousness since the it has not been shown that each and every claim limitation is taught by the asserted references.

In addition, even assuming, for the sake of argument, that Kaehler, in combination with DeLorme, teaches all the claimed elements, the Office does not present a proper rationale to combine the references to achieve the claimed system and method, and thus has failed to set forth a *prima facie* case of obviousness. Specifically, modifying the primary reference to include the features of the secondary references would not have been obvious because the modification would represent classic **impermissible hindsight**.

For example, the reasons asserted by the Office Action that it would have been obvious to modify Kaehler’s specific fuel-dispensing system using a transponder with the secondary

reference, e.g., with DeLorme's travel reservation information and planning system "to provide a completely integrated system that enable[s] an individual to plan, review, locate, schedule and select or execute customized or personalized travel arrangements and activities in association with map displays or other output of travel routes, chronological events, diverse travel topics and geographical points of interest along such routes" is clearly improper. *See, e.g.*, Office Action at p. 9.

First, Appellants respectfully submit that the Office improperly *assumes* the combination recited in the claim would be desired. For example, the Office asserts that the combination would provide these performance advantages even though nothing in the prior art, taken as a whole, suggests this desire or advantage. Specifically, the Office Action assumes that it would have been obvious to one of ordinary skill in the art to use a travel reservation information and planning system in Kaehler's fuel dispensing system using a transponder. "In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1447, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Here, The Office Action fails to explain *why* the art as a whole would suggest use of a travel reservation information and planning system in Kaehler's system, which has nothing to do with travel and reservation planning, let alone generating "map tickets" for various media outputs. Accordingly, Appellants submit that Kaehler and Delorme are nonanalogous art. Thus, Appellants submit that the Office's assumption is clearly improper.

Second, Appellants submit that the Office's assertion of obviousness is lacking in *evidence*. Instead, the Office Action improperly relies on its own hindsight conjecture that the feature of a travel reservation information and planning system may "provide an integrated

system.” *See, e.g.*, Office Action at page 9. For example, the Office’s statement that DeLorme would provide such a feature to Kaehler’s specific method and system is wholly unsupported. The reasons for obviousness cited by the Office to combine the references is nowhere to be found in either the DeLorme or Kaehler reference. Even assuming that the rationale is applicable, Kaehler makes no suggestion that it would benefit from the teachings of DeLorme, specifically the use of a travel reservation information and planning feature, or *how* that would work to achieve the claimed invention. For example, Kaehler is concerned with a fuel dispensing system using a transponder whereas DeLorme is primarily concerned with a travel reservation information and planning system for generating “map tickets” in various outputs. In fact, DeLorme’s system is directed to merely providing information, not transaction processing using a transponder. Therefore, the person of ordinary skill would not find it obvious to combine teachings from these disparate references to arrive at Appellants’ invention. As a result, Appellants respectfully submit that the combination of the primary reference and the secondary references would not have obvious to one of ordinary skill in the art at the time of the invention and that the Office’s conclusion is clearly based on improper hindsight reasoning gleaned from Appellants’ specification.

Thus, the Office has failed to set forth a *prima facie* case of obviousness. For at least the reasons discussed above, the obviousness rejection for claim 66 is improper and should be withdrawn.

Therefore, independent claim 66 is allowable over Kaehler and DeLorme and allowance thereof is respectfully requested.

22. Claim 67 is Separately Patentable

Claim 67 is separately patentable because Kaehler and DeLorme fail to disclose the

payment information corresponds to a credit card, debit card, or bank account, or a combination thereof. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 67. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 67 be withdrawn.

23. Claim 68 is Separately Patentable

Claim 68 is separately patentable because Kaehler and DeLorme fail to disclose transmitting additional customer information to said host transaction processing system, associating said additional customer information with said transmitter identification data and said payment information, and storing said associated additional customer information, transmitter identification data and said payment information. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 68. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 68 be withdrawn.

24. Claim 69 is Separately Patentable

The rejection is improper at least because Kaehler and DeLorme (1) fail to teach each and every claim limitation and (2) fail to establish a prima facie case of obviousness for claim 69 rejected under 103.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or “secondary considerations,” of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An “expansive and flexible approach” should be applied when determining obviousness based on a combination of prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather, there must still be some “reason that would have prompted” a person of ordinary skill in the art to combine the elements in the specific way that he or she did. Id.; In re Icon Health & Fitness, Inc., 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

Specifically, independent claim 69 recites “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system.” As acknowledged by the Office, “Kaehler fails to explicitly teach electronically enrolling a ser associated with a customer transponder by storing enrollment data.” *See* Office Action at page

10. The Office therefore relies on DeLorme to teach this limitation. However, Appellants respectfully submit that DeLorme, *inter alia*, does not disclose at least these limitations and therefore fails to cure the deficiencies of Kaehler.

The Office asserts that DeLorme teaches an “Accounting Subsystem [that] manages ACCOUNTING DATA...[which] is involved in various transactional operations in TRIPS [Travel Reservation and Information System]...” See Office Action at p. 10-11. Appellants note that nothing in DeLorme teaches “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system,” as claimed. The Office does not even assert as such. In fact, the Office merely relies on DeLorme for its teaching directed to “accounting data” within the framework of travel reservation and planning system, e.g., TRIPS. The fact that accounting data may be involved in various transaction operations” of TRIPS is completely irrelevant since claim 69 is directed towards “electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system.” At best, DeLorme uses computerized travel reservation information and planning system to generate “map ticket” outputs in various media, which has nothing to do with electronically enrolling a user associated with a customer transponder by storing enrollment data. See Office Action at Abstract. Therefore, the Office fails to set forth a *prima facie* case of obviousness since the it has not been shown that each and every claim limitation is taught by the asserted references.

In addition, even assuming, for the sake of argument, that Kaehler, in combination with DeLorme, teaches all the claimed elements, the Office does not present a proper rationale to

combine the references to achieve the claimed system and method, and thus has failed to set forth a *prima facie* case of obviousness. Specifically, modifying the primary reference to include the features of the secondary references would not have been obvious because the modification would represent classic **impermissible hindsight**.

For example, the reasons asserted by the Office Action that it would have been obvious to modify Kaehler's specific fuel-dispensing system using a transponder with the secondary reference, e.g., with DeLorme's travel reservation information and planning system "to provide a completely integrated system that enable[s] an individual to plan, review, locate, schedule and select or execute customized or personalized travel arrangements and activities in association with map displays or other output of travel routes, chronological events, diverse travel topics and geographical points of interest along such routes" is clearly improper. *See, e.g.*, Office Action at p. 11.

First, Appellants respectfully submit that the Office improperly *assumes* the combination recited in the claim would be desired. For example, the Office asserts that the combination would provide these performance advantages even though nothing in the prior art, taken as a whole, suggests this desire or advantage. Specifically, the Office Action assumes that it would have been obvious to one of ordinary skill in the art to use a travel reservation information and planning system in Kaehler's fuel dispensing system using a transponder. "In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1447, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Here, The Office Action fails to explain *why* the art as a whole would suggest use of a travel reservation information and planning system in Kaehler's system, which

has nothing to do with travel and reservation planning, let alone generating “map tickets” for various media outputs. Accordingly, Appellants submit that Kaehler and DeLorme are nonanalogous art. Thus, Appellants submit that the Office’s assumption is clearly improper.

Second, Appellants submit that the Office’s assertion of obviousness is lacking in evidence. Instead, the Office Action improperly relies on its own hindsight conjecture that the feature of a travel reservation information and planning system may “provide an integrated system.” *See, e.g.*, Office Action at page 11. For example, the Office’s statement that DeLorme would provide such a feature to Kaehler’s specific method and system is wholly unsupported. The reasons for obviousness cited by the Office to combine the references is nowhere to be found in either the DeLorme or Kaehler reference. Even assuming that the rationale is applicable, Kaehler makes no suggestion that it would benefit from the teachings of DeLorme, specifically the use of a travel reservation information and planning feature, or *how* that would work to achieve the claimed invention. For example, Kaehler is concerned with a fuel dispensing system using a transponder whereas DeLorme is primarily concerned with a travel reservation information and planning system for generating “map tickets” in various outputs. In fact, DeLorme’s system is directed to merely providing information, not transaction processing using a transponder. Therefore, the person of ordinary skill would not find it obvious to combine teachings from these disparate references to arrive at Appellants’ invention. As a result, Appellants respectfully submit that the combination of the primary reference and the secondary references would not have been obvious to one of ordinary skill in the art at the time of the invention and that the Office’s conclusion is clearly based on improper hindsight reasoning gleaned from Appellants’ specification.

Thus, the Office has failed to set forth a *prima facie* case of obviousness. For at least the

reasons discussed above, the obviousness rejection for claim 69 is improper and should be withdrawn.

Therefore, independent claim 69 is allowable over Kaehler and DeLorme and allowance thereof is respectfully requested.

25. Claim 70 is Separately Patentable

Claim 70 is separately patentable because Kaehler and DeLorme fail to disclose the payment information corresponds to a credit card, debit card, or bank account, or a combination thereof. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 70. In addition, there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 70 be withdrawn.

26. Claim 71 is Separately Patentable

Claim 71 is separately patentable because Kaehler and DeLorme fail to disclose transmitting additional customer information to said host transaction processing system, associating said additional customer information with said transmitter identification data and said payment information, and storing said associated additional customer information, transmitter identification data and said payment information. Furthermore, the Office Action's rejection of this claim is improper for at least similar reasons set forth above as Kaehler and DeLorme fail to show each and every claim limitation and fail to provide a prima facie case of obviousness for claim 71. In addition, there is no teaching, motivation, or rationale of obviousness to modify any

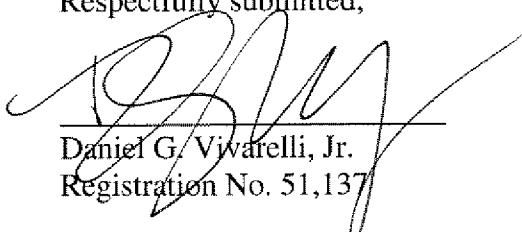
of the applied references to include this feature.

For at least the above reasons Appellants respectfully request that the rejection of claim 71 be withdrawn.

VIII. CONCLUSION

Accordingly, Appellants respectfully requests that the Board reverse the prior art rejections set forth in the Final Office Action. The Director is hereby authorized to treat any current or future reply, requiring a petition for an extension of time for its timely submission as incorporating a petition for extension of time for the appropriate length of time. Appellants also authorize the Director to credit any differences or overpayment of fees to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,


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IX. CLAIMS APPENDIX

1- 20. (Cancelled)

21. (Previously Presented) A method for enrolling users in a transaction processing program, comprising:

receiving transmitter identification data and payment information at a point-of-sale device;

electronically associating said transmitter identification data with said payment information;

transmitting said associated transmitter identification data and said payment information to a host transaction processing system; and

electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system.

22. (Previously Presented) The method of claim 21, wherein said payment information corresponds to a credit card, debit card, or bank account, or a combination thereof.

23. (Previously Presented) The method of claim 21, further comprising transmitting additional customer information to said host transaction processing system, associating said additional customer information with said transmitter identification data and said payment information, and storing said associated additional customer information, transmitter identification data and said payment information.

24. (Previously Presented) A method for enrolling users in a transaction processing program, comprising:

receiving transmitter identification data and payment information at one of a

plurality of point-of-sale devices;

transmitting said transmitter identification data and said payment information to a host transaction processing system;

electronically assigning a unique customer identifier that corresponds to said transmitter identification data;

associating said unique customer identifier, said transmitter identification data and said payment information; and

electronically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated unique customer identifier, transmitter identification data and payment information in said host transaction processing system.

25. (Previously Presented) The method of claim 24, wherein said payment information corresponds to a credit card, debit card, or bank account, or a combination thereof.
26. (Previously Presented) The method of claim 24, further comprising transmitting additional customer information to said host transaction processing system, associating said additional customer information with said transmitter identification data and said payment information, and storing said associated additional customer information, transmitter identification data and said payment information.

27-51. (Canceled)

52. (Previously Presented) The method of claim 21, further comprising:
 - providing the customer transponder associated with the transmitter identification data to a customer.
53. (Previously Presented) The method of claim 52, wherein the providing the customer transponder and receiving the transmitter data and payment information occurs at a

merchant location.

54. (Previously Presented) The method of claim 24, further comprising:
 - providing the customer transponder associated with the transmitter identification data to a customer.
55. (Previously Presented) The method of claim 54, wherein the providing the customer transponder and receiving the transmitter data and payment information occurs at a merchant location.
56. (Previously Presented) The method of claim 21, further comprising:
 - verifying the payment information.
57. (Previously Presented) The method of claim 24, further comprising:
 - verifying the payment information.
58. (Previously Presented) A system, comprising:
 - a merchant reader that receives transmitter identification data and payment information, electronically associates said transmitter identification data with said payment information, and transmits said associated transmitter identification data and said payment information to a host transaction processing system; and
 - a host processing system that receives said transmitted information and enrolls a user associated with a customer transmitter by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system.
59. (Previously Presented) The system of claim 58, wherein said payment information corresponds to a credit card, debit card, or bank account, or a combination thereof.
60. (Previously Presented) The system of claim 58, wherein said merchant reader receives

additional customer information and transmits the additional customer information to said host transaction processing system, and wherein said host processing system associates said additional customer information with said transmitter identification data and said payment information, and stores said associated additional customer information, transmitter identification data and said payment information.

61. (Previously Presented) The system of claim 58, wherein said merchant reader is associated with a point-of-sale device.

62. (Previously Presented) A system, comprising:

a merchant reader that receives transmitter identification data and payment information and transmits said transmitter identification data and said payment information to a host transaction processing system; and

a host transaction processing system that electronically assigns a unique customer identifier that corresponds to said transmitter identification data, associates said unique customer identifier, said transmitter identification data and said payment information, and enrolls a user associated with a customer transmitter by storing enrollment data comprising said associated unique customer identifier, transmitter identification data and payment information in said host transaction processing system.

63. (Previously Presented) The system of claim 62, wherein said payment information corresponds to a credit card, debit card, or bank account, or a combination thereof.

64. (Previously Presented) The system of claim 62, wherein said merchant reader receives additional customer information and transmits the additional customer information to said host transaction processing system, and wherein said host processing system associates said additional customer information with said transmitter identification data and said

payment information, and stores said associated additional customer information, transmitter identification data and said payment information.

65. (Previously Presented) The system of claim 62, wherein said merchant reader is associated with a point-of-sale device.
66. (Previously Presented) A method for enrolling users in a transaction processing program, comprising:
 - receiving transmitter identification data and payment information at a point-of-sale device;
 - automatically associating said transmitter identification data with said payment information;
 - transmitting said associated transmitter identification data and said payment information to a host transaction processing system; and
 - automatically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated transmitter identification data and said payment information in said host transaction processing system.
67. (Previously Presented) The method of claim 66, wherein said payment information corresponds to a credit card, debit card, or bank account, or a combination thereof.
68. (Previously Presented) The method of claim 66, further comprising transmitting additional customer information to said host transaction processing system, associating said additional customer information with said transmitter identification data and said payment information, and storing said associated additional customer information, transmitter identification data and said payment information.
69. (Previously Presented) A method for enrolling users in a transaction processing program,

comprising:

receiving transmitter identification data and payment information at one of a plurality of point-of-sale devices;

transmitting said transmitter identification data and said payment information to a host transaction processing system;

automatically assigning a unique customer identifier that corresponds to said transmitter identification data;

associating said unique customer identifier, said transmitter identification data and said payment information; and

automatically enrolling a user associated with a customer transponder by storing enrollment data comprising said associated unique customer identifier, transmitter identification data and payment information in said host transaction processing system.

70. (Previously Presented) The method of claim 69, wherein said payment information corresponds to a credit card, debit card, or bank account, or a combination thereof.
71. (Previously Presented) The method of claim 69, further comprising transmitting additional customer information to said host transaction processing system, associating said additional customer information with said transmitter identification data and said payment information, and storing said associated additional customer information, transmitter identification data and said payment information.

X. EVIDENCE APPENDIX

None.

XL. RELATED PROCEEDINGS APPENDIX

None.